

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**MARK EDWARD BERRY,**

Plaintiff,

v.

**LEE BARRETT WESTMORELAND,**

Defendant.

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Civil Action No. **3:09-CV-0064-L**

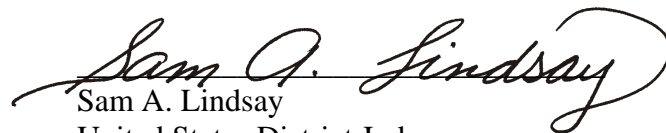
**ORDER**

Before the court is Plaintiff's Pro Se Civil Rights Complaint ("Complaint"), filed January 12, 2009. Pursuant to Special Order 3-251, the Complaint was referred to United States Magistrate Judge Jeff Kaplan. On January 14, 2009, the Findings and Recommendation of the United States Magistrate Judge ("Report") was filed. No objections to the Report have been filed.

Plaintiff brings this civil rights action against his former attorney, Mark Edward Berry ("Mr. Berry"). Because neither retained nor appointed counsel acts under color of state law by representing a defendant in the course of a criminal proceeding, the magistrate judge found that Mr. Berry is not a state actor and cannot be sued for civil rights violations under 42 U.S.C. § 1983. He recommended that the Complaint be summarily dismissed.

Having reviewed the magistrate judge's Report, the Complaint, record, and applicable law, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court therefore **dismisses with prejudice** Plaintiff's Pro Se Civil Rights Complaint.

**It is so ordered** this 30th day of January, 2009.

  
Sam A. Lindsay  
United States District Judge